

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ORDER

This matter is before the Court on movant's motion for leave to proceed in forma pauperis on appeal. The motion will be denied.

Movant filed his § 2255 motion on May 28, 2002. On August 6, 2004, the Court denied the motion on the merits. Movant appealed, and the United States Court of Appeals for the Eighth Circuit dismissed the appeal on April 6, 2005.

On November 10, 2009, movant filed a petition for writ of audita querela or, in the alternative, a renewed motion for reduction of sentence. The Court reviewed the petition and denied it on November 19, 2009, because it contained no legal merit. Movant now wishes to appeal from the denial of his petition for writ of audita querela.

Title 28 U.S.C. § 1915(a)(3) states: “An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” In this instance, the Court determines that movant’s appeal is not taken in good faith.

Movant's petition for audita querela was without legal merit. Additionally, it was filed more than five years after this Court denied his § 2255 motion. For these reasons, the motion for leave to proceed in forma pauperis on appeal will be denied.

Accordingly,

IT IS HEREBY ORDERED that movant's motion for leave to proceed in forma pauperis on appeal [#38] is **DENIED**.

IT IS FURTHER ORDERED that plaintiff shall, within thirty (30) days of the date of this Order, either pay the \$455 appellate filing fee or file a motion in the United States Court of Appeals for the Eighth Circuit for leave to proceed in forma pauperis.

IT IS FURTHER ORDERED that plaintiff shall file any future documents or pleadings in connection with his appeal directly with the United States Court of Appeals for the Eighth Circuit.

Dated this 4th day of December, 2009.

/s/ Jean C. Hamilton
JEAN C. HAMILTON
UNITED STATES DISTRICT JUDGE